

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lowell Watts	:	
	:	
v.	:	C-2018-3002477
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint filed by Lowell Watts for his failure to serve full and complete responses to interrogatories and request for production of documents and his failure to serve Discovery Requests upon Respondent by December 14, 2018, in violation of an Interim Order dated November 8, 2018; and his failure to serve witness information and a Status Report upon Respondent by January 18, 2019, and May 10, 2019, respectively, in violation of an Interim Order dated October 17, 2018.

HISTORY OF THE PROCEEDING

Lowell Watts (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or West Penn) on May 22, 2018, objecting to the installation of a smart meter at his residence at 141 Elk Avenue, Kane, Pennsylvania 16735 (service location), due to health

concerns. As relief, Complainant requests he be permitted to keep his current analog meter and “respectfully request[s] a hearing so they will understand my concerns.”

On June 25, 2018, Respondent filed an Answer and New Matter to the Complaint. Respondent admitted Complainant refused installation of a smart meter and offered to provide meter readings to West Penn in order to maintain his currently installed meter. Respondent denied the remaining material allegations set forth in the Complaint. Respondent further averred it is required by Act 129 of 2008¹ (Act 129), to install a smart meter. Respondent requested this matter be referred to mediation.

Additionally, on June 25, 2018, Respondent filed Preliminary Objections to the Complaint. Respondent averred that the request for relief for an exemption from the installation of a smart meter is not legally recoverable in the cause of action and that Complainant has failed to allege Respondent violated any Commission statute, regulation, order or tariff provision. Respondent further averred it is required by Act 129 to install a smart meter at the service location. Finally, Respondent argued that the Formal Complaint was legally insufficient because it failed to state a claim upon which the Commission can grant relief, that a hearing was not in the public interest, and that the Complaint did not meet the standards set forth in recent Commission decisions in order to survive Preliminary Objections.

On August 2, 2018, the Commission issued a Motion Judge Assignment Notice, assigning this proceeding to the undersigned.

Respondent’s Preliminary Objections were denied by Interim Order entered on August 7, 2018.

On October 11, 2018, Respondent filed a Motion to Compel Responses to Interrogatories and Document Requests (Motion to Compel). In the Motion to Compel, Respondent averred, *inter alia*, that on September 14, 2018, the Company forwarded to Complainant Interrogatories and Document Requests (Discovery Requests) via First Class Mail.

¹ 66 Pa.C.S. § 2806.1 *et seq.*

In its Discovery Requests, Respondent asserted it sought information and documents related to Complainant's allegations regarding the Company's smart meters. Respondent further averred that on October 8, 2018, Respondent received a letter from Complainant dated October 3, 2018, objecting to all of Respondent's Discovery Requests, asserting he "filed for a hearing with the PUC, not you. I Lowell watts [sic], a man respectfully deny answering your legal questions and would appreciate a hearing date in front of the P.U.C."

Complainant did not file a response to the Motion to Compel.

On October 17, 2018, an Interim Order Establishing Initial Litigation Schedule was entered instructing the parties to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness (witness information) to the other Party by January 18, 2019, for expert and factual witnesses, to conclude Discovery by April 19, 2019, and to file a Status Report by May 10, 2019.

On November 8, 2018, an Interim Order was entered granting the Respondent's Motion to Compel Responses to Interrogatories and Requests for Production of Documents. In addition, Complainant was directed to serve upon counsel for Respondent, full and complete responses to all the Discovery Requests by December 14, 2018.

On November 13, 2018, an Interim Order was entered directing the Parties to participate in a prehearing conference on December 6, 2018.

On December 4, 2018, the undersigned received an undated correspondence from Complainant entitled "Notice to Correct the Record," which stated, *inter alia*, that Complainant "will be present at the pre-hearing on December 6, 2018 as a courtesy to answer any questions concerning the notices I, have given," and that "it is not my intent to participate in a pre-hearing and be at the mercy of a single man of the legal society."

On December 4, 2018, as a result of receiving Complainant's letter, an Interim Order was entered cancelling the prehearing conference scheduled for December 6, 2018.

On December 17, 2018, a Telephonic Prehearing Conference Notice was issued by the Commission rescheduling the prehearing conference for February 5, 2019.

Additionally, on December 17, 2018, the undersigned received an undated correspondence from Complainant in which Complainant questioned why the prehearing conference scheduled for December 6, 2018, was cancelled.

On January 10, 2019, Respondent filed a Motion to Dismiss the Formal Complaint due to Complainant's failure to respond to the Discovery Requests or respond to the November 8, 2018, Interim Order granting Respondent's Motion to Compel.

On January 30, 2019, Respondent filed an Amended Motion to Dismiss the Formal Complaint, to include Complainant's failure to provide witness information as required by the November 13, 2018, Interim Order. The Amended Motion to Dismiss included a Notice to Plead requiring Complainant to file a written response within five (5) days of service (February 4, 2019).

The prehearing conference was convened as scheduled on February 5, 2019. Lauren M. Lepkoski, Esquire, and Tori L. Giesler, Esquire, appeared on behalf of Respondent. Complainant also appeared and participated at the prehearing conference. At the prehearing conference, Complainant indicated that he was not certain if he wished to continue to prosecute his Formal Complaint. Complainant also stated that he did not receive a copy of the Amended Motion to Dismiss filed by Respondent on January 30, 2019. An Interim Order was entered on February 6, 2019, extending Complainant's deadline to file a response to the Amended Motion to Dismiss until February 14, 2019.

On February 25, 2019, the undersigned received a one-page document from Complainant requesting a continuance to respond to the Amended Motion to Dismiss, to retain counsel. On March 7, 2019, an Interim Order was entered extending the deadline for Complainant to file a response to the Amended Motion to Dismiss to April 1, 2019.

On April 3, 2019, Complainant filed a letter requesting legal counsel be appointed for him.

On May 13, 2019, Respondent filed its Status Report, in accordance with the October 17, 2018 Interim Order. No Status Report was filed by Complainant.

On July 22, 2019, an Interim Order was entered extending the deadline for Complainant to file and serve a response to the Amended Motion to Dismiss to August 30, 2019. Additionally, the Interim Order advised Complainant that, unfortunately, the Commission may not appoint legal counsel for litigants. Complainant was directed to take immediate steps to retain counsel and advise counsel to comply with all orders previously entered in this proceeding.

On October 3, 2019, Respondent filed its Second Amended Motion to Dismiss Complaint of Lowell Watts for Failure to Comply with Orders (Second Amended Motion to Dismiss), averring, *inter alia*, Complainant failed to serve full and complete responses to all the interrogatories and request for production of documents responses and his Discovery Requests upon Respondent by December 14, 2018, in violation of an Interim Order dated November 8, 2018; his failure to serve witness information and a Status Report upon Respondent by January 18, 2019, and May 10, 2019, respectively, in violation of an Interim Order dated October 17, 2018. Respondent argued the Complaint should be dismissed in its entirety, because Complainant's failure to respond to the Discovery Requests and identify witnesses demonstrates Complainant's lack of cooperation and willingness to participate in the proceeding as required by the Commission's regulations.

As of the date of this Initial Decision, Complainant has not provided full and complete responses to the Discovery Requests, and, has failed to serve witness information or file a status report.

The record closed on November 8, 2019, upon filing of Complainant's letter on November 8, 2019, which is treated as a reply to the Second Amended Motion to Dismiss filed by Respondent.²

FINDINGS OF FACT

1. Complainant is Lowell Watts.
2. Respondent is West Penn Power Company, a jurisdictional public utility.
3. The service location is 141 Elk Avenue, Kane, Pennsylvania 16735.
4. On May 22, 2018, Complainant filed a Formal Complaint against Respondent, objecting to the installation of a smart meter at his residence due to health concerns, as relief, Complainant requested he be permitted to keep his current analog meter.
5. On June 25, 2018, Respondent concurrently filed an Answer and New Matter to the Complaint, averring that Respondent was required to install a smart meter at the service location, and Preliminary Objections, arguing that Complainant failed to state a claim upon which the Commission can grant relief and failed to allege a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission.
6. Respondent's Preliminary Objections were denied by Interim Order entered on August 7, 2018.
7. On September 14, 2018, Respondent filed a Certificate of Service regarding its service of Discovery Requests upon Complainant.

² This letter is dated "10-8-19 & 10-25-19" and was filed on November 8, 2019. Complainant states in this letter that he, not a doctor, is the best judge of what makes him ill and he requests a trial by a jury of his peers.

8. On October 8, 2018, Respondent received a letter from Complainant dated October 3, 2018 objecting to all of Respondent's discovery requests, stating he "filed for a hearing with the PUC, not you."

9. On October 11, 2018, Respondent filed a Motion to Compel, averring that Complainant had not served full and complete response to the Discovery Requests.

10. On October 17, 2018, an Interim Order Establishing Initial Litigation Schedule was entered instructing the Parties to, *inter alia*, provide the names, addresses, and written summaries of the expected testimony for each witness to the other party by January 18, 2019, for expert and factual witnesses, to conclude Discovery by April 19, 2019, and to file a Status Report by May 10, 2019.

11. On November 8, 2018, an Interim Order was entered granting Respondent's Motion to Compel, ordering Complainant to provide full and complete responses to all of the Respondent's interrogatories and request for production of documents no later than December 14, 2018.

12. On November 13, 2018, an Interim Order was entered directing the Parties to participate in a prehearing conference on December 6, 2018.

13. On December 4, 2018, an Interim Order was entered cancelling the prehearing conference scheduled for December 6, 2018.

14. On December 17, 2018, a Telephonic Prehearing Conference Notice was issued by the Commission rescheduling the December 6, 2018, Prehearing Conference for February 5, 2019.

15. On January 10, 2019, Respondent filed a Motion to Dismiss Complainant's Formal Complaint, averring, *inter alia*, Complainant failed to comply with the November 8, 2018, Interim Order requiring Complainant to provide full and complete Discovery

Responses to all of the Interrogatories and Request for Production of Documents by December 14, 2018, in violation of the November 8, 2018, Interim Order.

16. Complainant did not respond to the Motion to Dismiss.

17. On January 30, 2019, Respondent filed an Amended Motion to Dismiss the Formal Complaint, to include Complainant's failure to provide identification of any witnesses to be presented, along with a summary of their testimony by January 18, 2019, in violation of the November 13, 2018, Interim Order. The Amended Motion to Dismiss included a notice to plead requiring Complainant to file a written response within five (5) days of service (February 4, 2019).

18. On February 5, 2019, the Prehearing Conference was held, as scheduled, all Parties were in attendance and participated, Complainant indicated during the conference that he was not certain if he wished to continue to prosecute his Formal Complaint. Additionally, Complainant claimed he did not receive a copy of the Amended Motion to Dismiss.

19. An Interim Order was entered on February 6, 2019, extending Complainant's deadline to file a response to the Amended Motion to Dismiss to February 14, 2019.

20. On February 25, 2019, the undersigned received a one-page document from Complainant requesting a continuance to respond to the Amended Motion to Dismiss to retain counsel.

21. On March 7, 2019, an Interim Order was entered extending the deadline for Complainant to file a response to the Amended Motion to Dismiss to April 1, 2019.

22. On April 3, 2019, Complainant filed a letter requesting legal counsel be appointed to him.

23. On May 13, 2019, Respondent filed its Status Report, in accordance with the October 17, 2018, Order.

24. Complainant did not file a Status Report.

25. On July 22, 2019, an Interim Order was entered extending the deadline for Complainant to file and serve a response to the Amended Motion to Dismiss to August 30, 2019.

26. Complainant did not respond to the Amended Motion to Dismiss by August 30, 2019.

27. On October 3, 2019, Respondent filed its Second Amended Motion to Dismiss Complaint of Lowell Watts for Failure to Comply with Orders (Second Amended Motion to Dismiss), averring, *inter alia*, Complainant failed to abide by any Interim Order entered by the undersigned as the Complainant has failed to submit his list of anticipated factual and/or expert witnesses, failed to respond to Respondent's Discovery Requests, and failed to submit a Status Report.

28. Complainant did not serve full and complete responses to the Interrogatories and Request for Production of Documents, failed to serve his Discovery Requests upon Respondent by December 14, 2018, in violation of an Interim Order dated November 8, 2018; he failed to serve witness information and a Status Report upon Respondent by January 18, 2019, and May 10, 2019, respectively, in violation of an Interim Order dated October 17, 2018.

DISCUSSION

In its Second Amended Motion to Dismiss, Respondent argued that the Complaint should be dismissed in its entirety due to Complainant's failure to provide witness information and respond to Discovery Requests and provide witness information demonstrate a lack of cooperation and willingness to prosecute his Complaint as required under the Commission's regulations.

The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa.Code § 5.321(c). Generally speaking, the Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. As long as the information sought in a discovery request appears reasonably calculated to lead to the discovery of admissible evidence, a party may not object to the discovery request on the basis that the information sought will be inadmissible at a hearing. 52 Pa.Code § 5.321(c).

In this proceeding, Respondent is entitled to engage in Discovery in order to obtain information that is relevant and material to the issues raised by Complainant, and it filed a Certificate of Service showing its service of Discovery Requests upon Complainant on September 14, 2018.

The Commission's regulations at 52 Pa.Code §§ 5.342(d) and (e) provide that a party must serve answers to interrogatories within twenty days of service and objections within ten days of service. In this case, as directed by the November 8, 2018, Interim Order, Complainant was to serve full and complete responses to all the Discovery by December 14, 2018.

In its Second Amended Motion to Dismiss, Respondent averred it had not yet received Complainant's witness information or Discovery Responses in violation of the October 17, 2018, Interim Order and the November 8, 2018, Interim Order, respectively.

The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant's failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

Complainant violated multiple Interim Orders issued in this case. As of the date of this Initial Decision, Complainant has not filed a Certificate of Service showing his service of full and complete responses to the Discovery Requests or his witness information upon Respondent. Further, numerous deadline extensions were provided to Complainant in this

proceeding giving him many opportunities to respond to Respondent's Motions to Dismiss and he chose not to.

The Commission recently considered similar cases where a complainant filed a complaint objecting to the installation of a smart meter and subsequently failed to comply with an order requiring the complainant to exchange witness information and failed to comply with an order granting a motion to compel. *See Kimberly Beckmann v. Metropolitan Edison Company*, Docket No. C-2017-2613702 (Final Order entered April 11, 2019); *Diana Cook v. West Penn Power*, Docket No. C-3003051 (Final Order entered July 11, 2019); *Darlene Stanton v. Pennsylvania Electric Company*, Docket No. C-2018-3001144 (Final Order entered July 11, 2019); *B. Susanne Spohn v. Metropolitan Edison Company*, Docket No. C-2018-3001725 (Final Ordered entered August 8, 2019). In each of these cases, the Commission unanimously upheld the administrative law judge's decision to dismiss the complaint with prejudice. *Id.*

Both Parties have due process rights that must be protected. Respondent attempted to gather information about Complainant's claims through discovery. Complainant has failed to engage, by failing to respond to discovery, Complainant has denied Respondent the opportunity to prepare a defense to his claims. To proceed with this matter in these circumstances would result in the denial of Respondent's due process rights.

A hearing in this matter is not necessary or appropriate and is not in the public interest. Accordingly, the Complaint will be dismissed with prejudice. The dismissal of the Complaint with prejudice is consistent with recent Commission precedent.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of this Complaint. 66 Pa.C.S. § 701.

2. The Commission's regulations permit the discovery of "any matter, not privileged, which is relevant to the subject matter involved in the pending action." 52 Pa.Code § 5.321(c).

3. The Commission’s regulations at 52 Pa.Code § 5.371 address the consequences of a party’s failure to comply with the Commission’s discovery regulations and provides that the Commission or the presiding officer may, on motion, make an appropriate order if a party fails to appear, answer, file sufficient answers, file objections, make a designation, or otherwise respond to discovery requests.

4. The Commission’s regulations at 52 Pa.Code § 5.372 provide that the presiding officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission’s regulations.

5. The Commission has held that parties must comply with the orders of an administrative law judge, and a complainant’s failure to do so is a sufficient basis to support dismissal of the matter. *Snyderville Community Development Corporation v. Philadelphia Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

6. The Commission’s regulations specify certain sanctions that are available when a party fails to comply with an order of the Commission “as is just.” 52 Pa.Code § 5.372(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Second Amended Motion to Dismiss the Complaint of Lowell Watts of West Penn Power Company at Docket No. C-2018-3002477, is granted.

2. That the Complaint filed by Lowell Watts against West Penn Power Company at Docket No. C-2018-3002477 is hereby dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2018-3002477 as closed.

Date: January 24, 2020

_____/s/
Jeffrey A. Watson
Administrative Law Judge